IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2068 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A K SHAH

Versus

STATE OF GUJARAT AND ANOTHER

Appearance:

MR DS VASAVADA, for Petitioner No. 1

MR NC THAKKAR,A.G.P., for Respondent No. 1

MR MD PANDYA, for Respondent No. 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 06/07/2001

ORAL JUDGEMENT

The petitioner is a Association of engineers, employed by the Gujarat Electricity Board and through its Additional General Secretary (Legal), it has filed the present petition.

2. On 18th September, 1986, the petitioner Association submitted a strike notice to respondent No.2 and the subject matter of the demand is mentioned in the Annexure appended to the said strike notice. In view of the fact that the petitioner-Association did not hear from respondent No.2, the petitioner approached the Conciliation Officer who made attempts to settle the dispute by conciliation proceedings and ultimately submitted a 'failure report'. On receipt of such 'failure report', respondent No.1 was required to make a reference. However, vide Order dated 5th June, 1987, the respondent No.1 rejected the claim for making a reference. It is the say of the petitioner that this order is vitiated by non-application of mind and has been passed on irrelevant consideration, and in making such order respondent No.1 has exceeded its jurisdiction.

3. Challenging the aforesaid order (Exh. 'C') dated 5th June, 1987 the following prayers are made :

"13. The petitioner, therefore, prays that this Hon'ble Court may be pleased to

(a) allow this petition with costs by quashing and setting aside the order at Annexure 'C', in exercise of powers conferred by Article 226 of the Constitution of India;

(b) and to please further hold that by rejecting the reference and passing the order at Annexure 'C', the respondent has acted arbitrarily and without application of mind; and the action of the respondent is illegal, arbitrary and contrary to the provisions of the Industrial Disputes Act, 1947, and it also infringes Article 14 of the Constitution of India;

(c) be further pleased to direct the respondent no.1 to reconsider the decision afresh and refer the dispute for adjudication;"

4. In support of the petition, Mr.Vasavda appearing for the petitioner has placed reliance on provisions of

the Industrial Disputes Act, 1947 with special reference to the definition of 'workman' under Section 2(s) of the said Act as well as Section 10 with special reference to Proviso under the said Section. He has further drawn our attention to the decision of the Apex Court in the case of Telco Convoy Drivers Mazdoor Sangh and another Vs. State of Bihar and others, AIR 1989 SC 1565 to contend that the appropriate government while exercising powers under Section 10(1) the Act functions in an administrative capacity and not in judicial or quasi-judicial capacity and hence it is not entitled to enter into the merits of the dispute and determination of the lis.

5. Mr.N.C.Thakkar, Ld. A.G.P., appearing for respondent No.1 has relied upon the decision of Supreme Court in the case of Secretary, Indian Tea Association Vs. Ajit Kumar Barot & others, 2000(3) SCC 93 and after referring to the law which has been summarized in paragraph 7 of the decision, it was submitted that the impugned order at Annexure 'C' was rightly made and it was not open to this Court to undertake review of such an order.

6. Mr.M.D.Pandya, Ld.Advocate appearing for respondent No.2, submits that as per the letter of appointment and the provisions of the Apprentice Act, 1961 no relationship of an employer or workman exists between the junior engineers employed by the respondent No.2-Board. It is submitted that this aspect of the matter is also taken into consideration by respondent No.1 while arriving at a decision whether a reference should be made or not. It is further submitted that in light of this position in law, the impugned order made by respondent No.1 does not call for any interference and the petition should be rejected on this count alone.

7. Having heard all the parties we find that the impugned order dated 5th June, 1987 cannot be permitted to stand. As can be seen from the said order, respondent No.1 has instead of forming a prima facie opinion as to whether an industrial dispute "exists or is apprehended" adjudicated the dispute itself on merits and that too without taking into consideration the relevant material on record. It is an undisputed fact between the workman and respondent No.2 that though the junior engineers were appointed as apprentice, they were so appointed against permanent clear vacancies and were assigned such duty and task, and further that the respondent No.2-Board was paying them wages as would be payable to junior engineers appointed permanently on sanctioned posts. There is one

more aspect in the matter in as much as the respondent No.1 made a reference in relation to almost similar dispute vide its order dated 7th September, 1986, which has been produced at annexure 'E'.

8. Taking into consideration the aforesaid factors, we find that the impugned order dated 5th June, 1987 at Annexure 'C' was made by the authority by exceeding its jurisdiction. The same is therefore quashed and set aside and respondent No.1 is directed to reconsider the decision afresh as to whether reference should be made or not, after taking into consideration all the relevant material.

9. The petition is allowed accordingly to the aforesaid extent. Rule is made absolute with no order as to costs.

(D.A. Mehta, J)

'Bhavesh'